

SENATE BILL 276

By Tracy

AN ACT to amend Tennessee Code Annotated, Section 39-17-420; Title 40, Chapter 33, Part 1; Title 53, Chapter 11 and Title 55, Chapter 5, Part 1, relative to property seizure and forfeiture procedure.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-33-102(a), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(a) A conveyance subject to forfeiture under this part may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable upon process issued by any circuit or criminal court having jurisdiction over the property.

SECTION 2. Tennessee Code Annotated, Section 40-33-104, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) A conveyance taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable subject only to the orders and decrees of the circuit or criminal court.

(b) When a conveyance is seized under this part, the seizing authority may:

(1) Place the conveyance under seal;

(2) Remove the conveyance to a place designated by the court having jurisdiction over the property; and/or

(3) Require the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable to take custody of the conveyance and remove it to an appropriate location for disposition in accordance with law.

SECTION 3. Tennessee Code Annotated, Section 40-33-105, is amended by deleting the section in its entirety and by substituting instead the following language:

When a conveyance is forfeited under this part, the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable shall remove it for disposition in accordance with law.

SECTION 4. Tennessee Code Annotated, Section 40-33-110(a), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(a) Disposition of a forfeited conveyance or proceeds of goods seized under the provisions of this part shall inure to the benefit of the county in which the goods were seized for enforcement of this part if the goods were seized by county law enforcement officers, or to the municipality in which they were seized if the goods were seized by municipal law enforcement officers, or to the university employing the campus police officers if the goods were seized by campus police officers as defined in Section 49-7-118; provided, that the forfeited conveyance or the funds derived from the confiscated

goods shall go to the law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes by the county or municipality or university; provided further, that if the law enforcement agency retains a forfeited conveyance, any liens that are filed against the forfeited conveyance shall be satisfied by the law enforcement agency that retains the conveyance.

SECTION 5. Tennessee Code Annotated, Section 53-11-201(b), is amended by deleting subdivision (1) in its entirety and by substituting instead the following language:

(1) All such property seized and forfeited under the provisions of this chapter shall be sold at public sale by the commissioner of general services when seized by an agency of the state or a campus police officer as defined in Section 49-7-118, if seized by a county or municipality, by the seizing agency of the county or municipality when the seized and forfeited property has been released by the commissioner of safety as now authorized by law.

SECTION 6. Tennessee Code Annotated, Section 39-17-420(a), is amended by deleting subdivisions (1) and (2) in their entirety and by substituting instead the following language:

(1) Except as provided in subdivision (a)(2) and in subsection (d), all fines and forfeitures of appearance bonds received because of a violation of any provision of this part and that are specifically set forth in this part, and the proceeds of goods seized and forfeited under the provisions of Section 53-11-451 and disposed of according to law, shall be accounted for in a special revenue fund of the jurisdiction that initiated the arrest, or in a special reserve fund of the university employing the campus police officers if the arrest was initiated by campus police officers as defined in Section 49-7-118. All financial activities related to funds received under this part shall be accounted for in this fund. Cash transactions related to undercover investigative operations of county or

municipal drug enforcement programs shall be administered in compliance with procedures established by the comptroller of the treasury. Moneys in the special revenue fund may be used only for the following purposes:

- (A) Local drug enforcement program;
- (B) Local drug education program;
- (C) Local drug treatment program; and
- (D) Nonrecurring general law enforcement expenditures.

(2) The chief law enforcement officer and the mayor of a municipality, or other chief executive officer of a metropolitan government, shall recommend a budget for the special revenue fund, to be approved by the legislative body of the municipality according to law. The chief law enforcement officer of a county shall recommend a budget for the special revenue fund, to be approved by the legislative body of the county according to law. The board of regents of the state university and community college system and the board of trustees for the university of Tennessee each shall approve a budget for the special revenue fund for funds from seizures by campus police officers as defined in Section 49-7-118 in the respective systems. Expenditures from the special revenue fund are subject to the availability of funds and budgetary appropriations for the expenditure. Any purchase made with moneys from the fund shall be made in accordance with all existing purchasing laws applicable to the particular county or municipality or university. All fines and forfeitures resulting from cases and actions of the Tennessee bureau of investigation shall be paid to the state treasurer, to be used only as appropriated by the general assembly. If goods are seized by a combination of the Tennessee bureau of investigation and county or municipal law enforcement personnel, the court ordering their disposal shall determine the allocation of proceeds upon

disposition of the goods. In all other cases, fines and forfeitures and goods and their proceeds shall be disposed of as otherwise provided by law.

SECTION 7. Tennessee Code Annotated, Section 53-11-451(b), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(b) Property subject to forfeiture under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative,

agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable has probable cause to believe that the property was used or is intended to be used in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4.

SECTION 8. Tennessee Code Annotated, Section 53-11-451, is amended by deleting subsection (d) and (e) in their entirety and by substituting instead the following language:

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the seizing authority may:

- (1) Place the property under seal;
- (2) Remove the property to a place designated by the seizing authority;
- (3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or
- (4) Regardless of any other method of disposition of property contained in this chapter, use of the property taken or detained, with permission of the court and under such terms and conditions as are approved by the court, for use in the

drug enforcement program of the county in which the goods are seized, or, with approval of the court having jurisdiction over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized, or both.

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate, in writing, any part of the property for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law.

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate, in writing, any such property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, such transfer shall be approved by the commissioner of finance and administration.

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided above, shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer,

campus police officer as defined in Section 49-7-118, or constable shall remove it for disposition in accordance with law.

SECTION 9. Tennessee Code Annotated, Section 53-11-451(h), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(h) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, or constable, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

SECTION 10. Tennessee Code Annotated, Section 53-11-452(g), is amended by deleting subdivision (1) in its entirety and by substituting instead the following language:

(1) Whenever property is forfeited under this section, the court may require the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in Section 49-7-118, constable, or clerk of the court or special master to sell the property at a public auction, subject to an order of the court. Whenever property is forfeited under this section, the court may also, if appropriate, require that the department of general services take custody of the property and dispose of it at a public auction, subject to an order of the court.

SECTION 11. Tennessee Code Annotated, Section 55-5-108(b)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:



(1) Any property on which the manufacturer's serial number, engine number, transmission number, vehicle identification number, or other distinguishing number or identification mark has been removed, defaced, covered, altered, destroyed or otherwise rendered unidentifiable is hereby declared to be contraband and subject to forfeiture to the state. This subdivision (b)(1) applies to all persons, including, but not limited to, those persons designated in subsection (a). It is the duty of the commissioner or the commissioner's designee, and of any other state, county, or municipal law enforcement officer or campus police officer as defined in Section 49-7-118, when such person has reason to believe that property constitutes contraband under this section, to seize and impound or otherwise take custody of the property on behalf of the department of safety.

SECTION 12. This act shall take effect July 1, 2007, the public welfare requiring it.